ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Cable Act Reform	)	CS Docket No. 96-85
Provisions of the Telecommunications	)	
Act of 1996	)	
	)	
	)	

To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

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SUMMARY

In enacting the Telecommunications Act of 1996 (the "1996 Act"), Congress sought to alleviate several regulatory burdens upon cable operators and to foster competition in the marketplace for video programming services. Congress' intent to favor market forces over regulation should guide the Commission's interpretation of the 1996 Act's cable reforms. As it adopts final rules to implement those reforms, the Commission must give effect to the plain meaning of the statute and must not erect regulatory barriers Congress never intended.

Favoring market-based results over regulatory fiat, Congress adopted a new test for effective competition, under which competition from a multichannel video programming distributor ("MVPD") affiliated with a local exchange carrier ("LEC") triggers deregulation of a cable operator's rates. Unlike the three other tests for effective competition adopted as part of the Cable Television Consumer Protection and Competition Act of 1992, the new "LEC-affiliate" test does not contain any minimum pass or penetration rate threshold necessary to trigger a finding of effective communication. Congress clearly intended that a cable operator have the flexibility to respond to competition from a LEC-affiliated MVPD offering service in its franchise area, *regardless* of the LEC-affiliate's penetration or pass rate. The Commission should reject as inconsistent with Congressional intent any proposal to superimpose a penetration or pass rate test on the LEC-affiliate test for effective competition.

The Commission should define "affiliate" in the context of the new effective competition test broadly and adhere to the Title I definition contained in the 1996 Act. The Commission should recognize all forms of passive, as well as active interests, in determining whether a LEC has an affiliated interest in a wireless operator. This test is consistent with

Congress' expectation that LECs will represent cable operators' most formidable competitors in the video programming marketplace. A narrow interpretation which did not count passive interests would be clearly at odds with Congress' vision of vigorous competition between cable operators and LECs, competition that Congress believed would benefit video programming subscribers.

The Commission's proposed definition of "comparable programming" for the LEC-affiliate test — at least twelve channels of programming, including at least one *broadcast* signal — represents departure from its existing definition of comparable programming. Given the importance of non-broadcast programming in the mix of programming services that are offered to subscribers and the competition which non-broadcast programming provides to cable operators, the Commission should ensure that effective competition is deemed to be present whenever a competing MVPD offers or makes available broadcast signals to subscribers in any manner. Effective competition should be deemed to exist whether or not a wireless operator provides or offers to provide an A/B switch, makes references to an A/B switch in its marketing materials, or advises subscribers how to receive over-the-air signals. Because, as a practical matter, a wireless operator is providing access to both broadcast and non-broadcast services, in each instance.

The Commission should streamline the procedures for resolving CPST rate complaints and for establishing the presence of effective competition. The Commission should require local franchising authorities to file a CPST rate complaint within 135 days of the effective date of the rate increase. The Commission should also impose a reasonable deadline by which it must decide whether to grant a cable operator's petition to establish the presence of

effective competition. In both cases, reasonable deadlines are needed to ensure efficient regulatory review.

The 1996 Act exempts bulk discounts to multiple dwelling units ("MDUs") from the uniform pricing requirement. Congress intended this exemption to give cable operators the flexibility to offer bulk discounts to MDU subscribers, regardless of whether the operator bills the subscribers individually or collectively through an arrangement with the building's management. In proposing to limit this exemption to situations in which the discount is negotiated by the building's management on behalf of all its tenants, the Commission draws an artificial distinction unsupported by the 1996 Act or its legislative history. No sound policy justifies the Commission's proposed distinction between discounts to subscribers billed collectively and those billed individually.

The 1996 Act prevents local franchising authorities from imposing on cable operators technical standards more stringent than those prescribed by the Commission. The 1996 Act further bars local franchising authorities from including in a franchise any provisions for the enforcement of technical standards. These reforms evidence Congress' belief that the Commission, not local franchising authorities, is better able to enforce its technical standards uniformly. The Commission should adopt final rules that reflect Congress' concern that intrusive local regulation of technical standards could thwart the development of more advanced cable technology.

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission's (the "Commission's") *Order and Notice of Proposed Rulemaking* in the above-referenced proceeding.[1/]

1/ *Order and Notice of Proposed Rulemaking*, CS Dkt. No. 96-85, FCC 96-154 (rel. April 9, 1996) (the "*Order*" and the "*Notice*").

I. THE COMMISSION'S IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT'S CABLE REFORMS SHOULD ADHERE TO THE PLAIN LANGUAGE OF THE STATUTE.

In the *Notice*, the Commission seeks comment on the appropriate scope of the Telecommunications Act's[2/] reforms to Title VI of the Communications Act. Specifically, the *Notice* asks whether the Commission should place certain limitations upon the 1996 Act's reforms, such as establishing a percentage pass or penetration rate threshold for the newly adopted LEC-affiliate prong of the effective competition test or restricting bulk discounts for multiple dwelling units ("MDUS") to situations in which a building's management negotiates the discount on behalf of all of its tenants.[3/] Cox submits that the Commission's implementation of the statute should be based on two principles: the plain wording of the statute and Congress' clear intent to reform cable rate regulation procedures.

The Cable Act reforms upon which the Commission now seeks comment were derived from the House bill.[4/] The House Report explains that the House bill's Cable Act reform provisions were intended to replace the "complicated and intrusive regulatory structure created by the Commission[, which] has severely inhibited the industry's growth."[5/] Recognizing that existing regulations impose "significant administrative and legal costs on cable operators that ultimately are borne by all subscribers," Congress concluded that

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2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) (the "1996 Act").

3/ *See Notice* at ¶¶ 72, 98.

4/ *See* H.R. Rep. No. 458, 104th Cong., 2d Sess. (1996) ("Conference Report") at 169.

5/ H.R. Rep. No. 204, 104th Cong., 1st Sess. (1995) ("House Report") at 54.

market-based solutions best protect the interests of video programming subscribers.[6/] Consistent with the Congressional policy of favoring competition over regulation, the Commission should give full effect to the deregulatory language of the 1996 Act and reject any proposals that would continue to subject cable operators to the "complicated and intrusive regulatory structure" Congress sought to eliminate. The Commission's rules should instead simply adhere to the plain language of the statute and not include embellishments which have no support in the statute or the 1992 Act's legislative history.

II. EFFECTIVE COMPETITION SHOULD BE DEEMED PRESENT WHEN BROADCAST SIGNALS ARE MADE AVAILABLE BY WIRELESS OPERATORS BY ANY MEANS.

Under the Commission's current rules, programming is considered "comparable" for purposes of the "competing provider" prong of the effective competition test if the programming contains at least twelve channels, including at least one non-broadcast channel.[7/] In the *Notice* the Commission proposes to adopt a different definition of comparable programming for purposes of the new "LEC-affiliate" prong of the effective competition test: at least twelve channels of programming, including at least one *broadcast* signal.[8/]

The Commission tentatively concludes that a "single definition of 'comparable programming' should apply to both prongs of the effective competition test in which that

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6/ *Id.*

7/ 47 CFR §76.905(g).

8/ *Notice* at ¶ 69.

term is used."[9/] Cox generally agrees that the nature of the programming itself — and not the ownership status of the MVPD offering the programming — should determine whether it is "comparable." Arguably, there is no sound reason to treat comparable programming differently based solely on whether the MVPD distributing the programing is LEC-affiliated.[10/]

It must be recognized, however, that while the ability to offer local broadcast signals may distinguish cable operators from *some* MVPDs (notably DBS), it is a cable operator's *non-broadcast* program offerings that drive subscriber penetration. The Commission has consistently found that programming consisting entirely of *non-broadcast* signals can represent effective competition to programming offered by cable systems. Subscribers are attracted to multichannel video programming services because they offer attractive non-broadcast programming that cannot be received without a subscription. The growing popularity of DBS, for example, demonstrates that competition for multichannel programming subscribers can come from services offering exclusively *non-broadcast* signals.[11/]

9/ *Notice* at ¶ 70.

10/ As discussed below, however, there may be other reasons why different treatment may be warranted.

11/ *See Competition Report* ¶¶ 49-50. The Commission has previously recognized that programming offerings that do not include local broadcast signals can and do compete effectively with traditional cable service. The Cable Services Bureau recently ruled that a cable system was subject to effective competition based, in part, on its finding that DBS and home satellite dish ("HSD") services offered "comparable" programming to all households in the franchise area. *Jones Intercable, Inc.*, DA 96-361,¶ 10 (rel. March 22, 1996) *See, e.g., id; Competition Order* at ¶ 215. ("The continued growth of DBS and the entry of additional (continued...)

Nevertheless, the Conference Report appears to suggest that "comparable" — at least for purposes of the new effective competition programming test — requires that subscribers have access to "some" television broadcast signals.[12/] Given the importance of non-broadcast programming in the mix of program services that are offered to subscribers and the competition which non-broadcast programming provides to cable operators, the Commission should ensure that effective competition is deemed to be present whenever a competing MVPD offers or makes available broadcast signals to subscribers in any manner. Moreover, an operator should be permitted to demonstrate that even where an MVPD does not offer or make available broadcast signals, effective competition exists when an operator demonstrates that some broadcast signals are available over-the-air in a franchise area.

Any mention in a wireless operator's marketing materials of the availability to receive off-air broadcast signals should be sufficient to deem broadcast signals "offered" by the wireless operator. Thus, when a wireless operator provides or offers to provide an A/B switch, references an A/B switch in its marketing materials, or advises a subscriber how to receive over-the-air signals, effective competition should be deemed to exist because the

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11/ (...continued)
competitors may exert a significant, favorable long-run effect on market conduct and performance in video programming."); *DBS Order* at ¶ 23 ("[W]e have consistently sought to promote effective competition to the services provided by cable systems, and we have encouraged the development of the DBS spectrum in precisely that context."); *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 7442, 7474 (1994) ("Since 1990, DBS has advanced as a potential long-term competitor to cable."); *Tempo Satellite, Inc.*, 7 FCC Rcd 2728, 2730 (1992) ("We have long anticipated that the DBS service, along with other multichannel video technologies, will provide an effective, competitive alternative to cable television.").

12/ In any case, because the current definition of comparable programming used under the competition provider test has a reasonable basis, it should not be modified.

wireless operator is, as a practical matter, providing access to both broadcast and non-broadcast service as part of its service offering.

Additionally, the offering of satellite-delivered broadcast channels (*e.g.*, "superstations") should qualify as "comparable programming." There is no distinction made in the Conference Report between local broadcast signals, distant signals, and "superstations." Aside from the method of delivery, there is nothing to distinguish superstations from other broadcast signals. It would therefore be an abuse of the Commission's discretion to draw a distinction between superstations and other distant and local signals.

III. THE 1996 ACT DOES NOT PROVIDE FOR A PENETRATION OR PASS RATE AS A CONDITION OF ESTABLISHING EFFECTIVE COMPETITION.

The Commission correctly concludes, consistent with Congressional intent, that the new test for effective competition under the 1996 Act applies to LECs (or their affiliates) whether they provide video programming services directly or are the licensee or owner of the facilities used to provide video services.[13/] The statute is plain in this regard: effective competition exists either (a) if a LEC or its affiliate "offers video programming services" (*i.e.*, is the "video service provider") or (b) if "any multichannel video programming distributor using the facilities of such carrier or its affiliate" offers the programming.[14/] Congress recognized that LECs — whether they provide the video services or own the

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13/ *Notice* at ¶ 71.

14/ 47 U.S.C. § 543(l)(1)(D).

facilities used to provide the service — possess the resources to provide competition to alternate video providers, thus ensuring that there will be competition in the video marketplace.[15/]

The type of service provided by the LEC or the alternate MVPD is irrelevant for purposes of determining whether this new effective competition test has been met. So long as the service is a video service "other than [a] direct-to-home satellite service[]," [16/] it may be considered for purposes of the test.[17/] In this regard, a satellite master antenna television ("SMATV") system used (or owned) by a LEC to provide comparable video service should be considered a source of effective competition under the new test because a SMATV system is not a direct-to-home ("DTH") satellite service. DTH services "use satellites to deliver video programming *directly* to subscribers." The two types of DTH service identified by the Commission in its most recent *Competition Report* are DBS services and home satellite dish services. These DTH services "use satellites instead of broadband wires or terrestrial microwave stations to transmit their programming to subscribers."

SMATV systems exhibit none of these signature characteristics of a DTH service. Subscribers to DTH services must have their own satellite dish, while a SMATV system serves many subscribers from a single dish. Indeed, the Commission itself has pointed out that SMATV systems functionally resemble traditional cable systems:

15/ 1992 Cable Act, § 2(b).

16/ *Id.*

17/ The Commission currently considers SMATV penetration in determining whether effective competition is present under the 1992 Cable Act. *Third Order on Reconsideration*, 9 FCC Rcd 4316, 4322 (1994).

> A SMATV system generally offers the same type of programming as a cable system, and the operation of a SMATV system largely resembles that of a cable system — one or more satellite dishes and antennas receive the programming signals; equipment combines, amplifies and processes the signals; and wires distribute the programming to individual dwelling units.

Thus, SMATV systems, by definition, cannot constitute "direct-to-home" satellite services, because programming reaches the homes of SMATV subscribers through broadband wire distribution facilities, not directly from a satellite. There is no rational basis for abandoning these obvious distinctions between DTH and SMATV services. SMATV systems should therefore fall within the class of video providers that can be a source of effective competition under the new test.

The Commission also seeks comment on what constitutes "offer" for purposes of the new effective competition test. The Commission proposes to require a cable operator seeking to prove effective competition to demonstrate that the competitor is "physically able" to offer service to subscribers in the franchise area and that potential subscribers in the franchise area are "reasonably aware" that they may purchase the competitor's service.[18/] In applying this definition of "offer," the Commission asks whether "Congress intended effective competition to be found if a LEC's service was offered to subscribers in any portion of the franchise area, or whether the competitor's service must be offered to some larger portion of the franchise area to constitute effective competition."[19/]

It is quite clear that the statute places no "minimum" on the penetration or pass rate necessary for a LEC to provide effective competition in a cable operator's franchise area,

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18/ *Order* at ¶¶ 10-11.

19/ *Notice* at ¶ 72.

and the statute's legislative history is consistent with this view. All that is required is that the LEC, its affiliate, or any MVPD using the LEC's facilities "offer[] video programming services" in the cable operator's franchise area.[20/] The Commission correctly notes that while the three tests for effective competition in the 1992 Cable Act specify minimum pass and penetration rates, the new test contains no such standards. If Congress envisioned that cable rates would escape regulation only where there were specific minimum levels of competition from LECs, it would have adopted a minimum pass or penetration rate as part of the new test. It is also reasonable to assume that because a penetration and pass rate standard were already a part of the effective competition test, Congress had no reason to adopt a new test that included a pass or penetration rate. Absent a specific reference in the statute or in its legislative history, the Commission cannot stray from the plain meaning of

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20/ 47 U.S.C. § 543(l)(1)(D).

the statute.[21/] To read into the statute a requirement for a penetration or pass rate test would be a clear abuse of the Commission's discretion.

IV. CABLE OPERATORS MUST HAVE THE FLEXIBILITY TO OFFER NON-PREDATORY DISCOUNTS TO ANY MDUs IN WHICH THEY PROVIDE SERVICE ON A BULK BASIS.

The Commission requests comment on the applicability of the uniform pricing provision to bulk rate customers, such as MDUs.[22/] The Commission tentatively concludes that discounted bulk rates may not be offered to subscribers "simply because they are residents of a multiple dwelling unit, but rather requires a 'bulk discount[],' to use the language of the statute, that is negotiated by the property owner or manager on behalf of all

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21/ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). Indeed, two members of the Commission acknowledge this statutory interpretation. Commissioner Quello noted in his separate statement:

> [T]his [fourth] prong [of the effective competition standard] does not include, as do the other three prongs, a pass and/or penetration test. Did Congress omit a number intentionally, so that the Commission would find effective competition whenever a LEC offers service in the franchise area, regardless of the extent of such offering? I believe so.

Separate Statement of Commissioner Quello, p. 1. Similarly, Commissioner Chong stated:

> Unlike the other three "effective competition" tests, this fourth test does *not* include a percentage penetration or pass rate. In adopting an effective competition test without a specific pass or penetration rate, Congress made its intention clear that this fourth effective competition test would be met if the LEC offered service in any portion of the franchise area. If Congress had intended a higher standard, I believe that it would have specified a pass or penetration rate as it did in the other three effective competition tests.

Separate Statement of Commissioner Chong, p. 2 (emphases in original).

22/ *Notice* at ¶ 98.

tenants."[23/] The Commission's notion of what constitutes a bulk rate is impermissibly narrow. There is no practical or economic difference between serving an MDU by offering services under a rate negotiated with the building management, or by simply offering service to all residents of the building. Therefore, the Commission should permit cable operators to offer discounted rates to individual MDU residents where service is provided in the building on a bulk basis regardless of whether the operator has a master agreement with building management.

In fact, many bulk service contracts allow operators to offer service to residents but do not guarantee universal penetration (as occurs where charges for cable service are bundled with the rent. Thus, operators that serve MDUs under contract may very well have significantly low penetration. especially where other video providers also offer service. Moreover, the Commission should not use its concern regarding predatory pricing to attempt to limit the availability of bulk discounts. To the extent that an operator may abuse the bulk discount exception to the uniform pricing rule, the statute permits a party to file a predatory pricing complaint with the Commission.

Indeed, the only limitation Congress placed on a cable operator's ability to offer bulk rate discounts to MDU subscribers was the prohibition against predatory pricing. If Congress had intended to impose additional limitations on the availability of bulk discounts, it easily could have specified them.

The Commission also has requested comment on the permissibility of providing bulk discounts, in addition to MDUs, to all "private" cable systems, as defined by the 1996 Act,

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23/ *Id.*

such as "mobile home parks and planned developments."[24/] The Commission previously held in its *Initial Rate Order* that the uniform rate provision does not preclude bulk discounts either to MDUs or private and quasi-private developments, such as "apartment buildings, hotels, condominium associations, hospitals, universities, and *trailer parks*. . . ."[25/] Service to subscribers in all of these buildings can be distinguished from service to subscribers in single family homes and thus, qualifies as service to a bona fide separate class of subscribers. The 1996 Act simply expands the class of facilities to include all facilities located wholly on private property, without regard to the nature or common ownership of the property served. Application of the uniformity exception to this class of subscribers therefore is entirely consistent with the 1996 Act's expansion of the private cable exemption because it pertains to facilities in which operators customarily offer bulk discounts.[26/] It also is consistent with a policy of encouraging cable operators to pass along any cost or administrative savings realized from serving private developments.[27/]

V. THE COMMISSION SHOULD DEFINE "AFFILIATE" BROADLY, AND ADOPT THE TITLE I DEFINITION CONTAINED IN THE 1996 ACT.

Congress recognized that an MVPD with the financial backing of a LEC would be a formidable competitor to cable systems. In fact, as noted above, Congress viewed the potential competitive effects of LEC entry into the video programming market as so

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24/ *Notice* at ¶ 99.

25/ *Initial Rate Order*, 8 FCC Rcd at 5897 (emphasis added).

26/ 47 U.S.C. § 522(7) (1996 Act, § 301(a)(2)).

27/ *Initial Rate Order*, 8 FCC Rcd at 5897-898.

significant that it did not establish any penetration or pass rate thresholds for triggering deregulation of a cable system in a franchise area served by a LEC-affiliated MVPD: the very *offering* of comparable programming in the franchise area by a LEC or its affiliate constitutes "effective competition." The Commission itself has recognized and predicted that LEC entry into the video programming marketplace "may pose a greater competitive threat to cable operators than competition from other providers."[28/]

To encourage true competition between LEC-backed MVPDs and cable operators, "affiliate" must be defined broadly. Cox believes that using the Title I definition of "affiliate" contained in the 1996 Act meets this goal so long as the Commission counts all forms of passive and beneficial interests, as well as active interests, when determining whether a LEC holds an affiliated interest in a MVPD.

The Commission's rules should not elevate form over substance. Whether a LEC has the ability to influence the policies of the MVPD — not how the LEC has structured its interest in the MVPD — should determine whether the MVPD qualifies as an "affiliate" of the LEC. Where a LEC has made a sizable investment in an MVPD, it is reasonable to assume that the LEC will take an active role in assuring itself a suitable return on that investment by participation in the operation, control, and management of the MVPD. The determination of what constitutes the "equivalent" of an equity interest will therefore require a broad reading of the term "equivalent" to include not only both active and passive

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28/ *Waiver of the Commission's Rules Regulating Rates for Cable Services*, FCC 95-455 at ¶ 22 (rel. Nov. 6, 1995).

ownership interests, but beneficial interests such as options, warrants, convertible debentures and interests held in trust.

Although the Commission has yet to issue any decisions on what constitutes an "ownership" interest for purposes of LEC-affiliation under its effective competition rules, it has dealt extensively in the past year with defining "ownership" for purposes of the limitations on foreign ownership of broadcast licensees under Section 310(b) of the Communications Act. In those decisions, the Commission has made its approach emphatically clear: "Where, as here, the ownership of corporate shares does not correspond to the beneficial ownership of the corporation, we will not be bound by a formalistic and formulaic 'count the shares' approach that understates the true extent of alien ownership." Thus, "in those instances in which computing the number of shares owned by aliens does not fairly reflect the extent of their ownership interests in a corporation, *analyzing the capital contributed* from foreign sources is necessary for us to evaluate the extent of alien ownership interests."

In its recent foreign ownership decisions, the Commission has acknowledged that "we must examine the economic realities of the transactions under review and not simply the labels attached by the parties to their corporate incidents." The Commission has taken this focus on "economic realities" well beyond combinations of warrants and convertible preferred stock interests, and has treated debt as a contribution to capital — and thus as "ownership" — when a loan so functioned: "We take this opportunity to emphasize that we will apply an analysis based on the economic realities of the situation to any proposed transaction to which a distinction between debt and equity is pertinent."

An expansive view of "ownership" is even more appropriate here than in the Commission's foreign ownership decisions, because Section 76.1401 of the interim rules defines an "affiliate" not only as an entity in which a LEC owns "an equity interest . . . of more than 10 percent" but also as an entity in which a LEC owns "the equivalent thereof."[15/] The "affiliation" rule thus expressly embodies the Commission's policy of assessing ownership based on economic realities.

The inclusion of these interests as equivalent to equity is consistent with Congress' recognition that LEC-affiliated operators pose real and substantial competition to the cable industry. Such an analysis takes into consideration the economic realities of telephone company involvement in the provision of video services.[29/] Thus, it is essential that the

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29/ The investment of Bell Atlantic and Nynex in CAI Wireless Systems, Inc. demonstrates how massive investment in a wireless operator would not be captured and counted toward the Commission's Title I standard if passive and beneficial interests or actual ability to influence were ignored. On March 28, 1995, BANX, a general partnership owned by Bell Atlantic and NYNEX, agreed to invest $100 million in CAI Wireless. The investment is reflected in (1) Senior Preferred Stock in CAI Wireless convertible into Voting Preferred Stock, each share of which, in turn, is convertible into 100 voting Common Shares of CAI Wireless, (2) partially prepaid warrants for the purchase of voting Common Shares, and (3) 14 percent Term Notes convertible into Senior Preferred Stock. The May 16, 1995 Schedule 13D filing made jointly with the SEC by Bell Atlantic and NYNEX succinctly summarizes the import of the investment:

> The conversion of the Senior Preferred Stock (including the shares issuable upon conversion of the Term Notes into Senior Preferred Stock) and the exercise of the Stage I and Stage II Warrant gives the BANX Affiliates [Bell Atlantic and NYNEX] the right to acquire, for an aggregate amount of approximately $302 million (including consideration originally paid for the Term Notes, the Senior Preferred Stock and such Warrants), shares of the Voting Preferred Stock which would be convertible into approximately 45 percent of the Fully-Diluted Common Shares.

(continued...)

Commission count all of a LEC's passive and beneficial, as well as active, interests in order to carry out Congress' intent in establishing this new effective competition standard.

The Commission should also clarify that LEC ownership interests in a particular MVPD will be aggregated in determining whether the LECs' interests satisfy the "affiliation" ownership threshold. Recognizing the financial resources and marketing experience of LECs, Congress was concerned that continued rate regulation would unfairly burden cable operators in competing with LEC-backed MVPDs. That concern is no less implicated — in fact, is even *more* implicated — when several LECs join as investors in an MVPD. Unless the Commission aggregates the interests of LECs in determining their affiliation status, a group of LECs could conceivably obtain a majority interest in an MVPD without any of the individual LECs owning enough of an interest to render the MVPD an "affiliate." This result obviously would be unfair to a competing cable system and would undermine Congress' intent to open the video programming marketplace to full and fair competition.

VI. LOCAL FRANCHISING AUTHORITIES ("LFAs") SHOULD BE REQUIRED TO FILE CPST RATE COMPLAINTS WITHIN 135 DAYS OF A RATE INCREASE.

The *Notice* asks whether the Commission should establish a deadline by which LFA rate complaints must be filed and proposes a deadline of 180 days after a CPST rate increase

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29/ (...continued)
Thus, these LECs have already acquired the right to acquire 45 percent of the fully diluted Common Shares of CAI Wireless through the conversion of senior preferred stock and the exercise of warrants.

takes effect.[30/] Cox applauds the Commission's decision to establish a deadline, but believes that a 180-day deadline subjects cable operators to unnecessary delay and uncertainty. Instead, Cox urges the Commission to require LFAs to file a complaint within 135 days of a rate increase. Under the framework established by the 1996 Act, an LFA can file a CPST rate complaint only if it receives at least two subscriber complaints within 90 days after the rate increase takes effect. Thus, the 135-day deadline suggested by Cox would provide an LFA at least 45 days to decide whether to file a rate complaint with the Commission. Forty-five days is a reasonable amount of time for LFAs to reach a preliminary determination about whether to file a rate complaint, especially when weighed against cable operators' interest in regulatory finality.

A 180-day deadline would allow LFAs to wait *6 months* after a rate increase becomes effective to challenge the increase. A cable operator relies on the rates it receives to plan its future business strategy and finance the offering of new services, and six months of uncertainty about whether those rates will become subject to challenge would unfairly affect the development of an operator's business plans. Furthermore, the filing of a complaint only initiates the process, and the additional delay inherent in processing the complaint by the Commission would delay final resolution of the rate issue for several more months.

A 135-day deadline would hasten the resolution of rate disputes and would afford LFAs ample time to decide whether to file a complaint. Speedier resolution of rate disputes would unquestionably serve the public interest. If a rate increase is justified, the cable operator benefits from a more efficient complaint process by obtaining more rapid regulatory

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30/ *Notice* at ¶¶ 22, 79.

approval. If a rate increase is not warranted, subscribers benefit from a more efficient complaint process by gaining relief from an unjust rate increase sooner. A 135-day deadline would therefore benefit both cable operators and consumers, and it would not prevent LFAs from fully deliberating whether to file a complaint.

Cox agrees with the Commission that cable operators should no longer be required to include the name, mailing address and telephone number of the Cable Services Bureau on monthly subscriber bills.[31/] Cable operators already provide sufficient information on their bills to allow subscribers to file complaints with their LFA. Any additional information would only confuse subscribers, who might attempt to contact the Commission directly rather than following the prescribed complaint procedures. Those contacts would unnecessarily burden the Commission, forcing it to expend resources instructing subscribers to direct their complaints to their LFA.

VII. THE 1996 ACT'S AMENDMENTS TO SECTION 624(E) ARE INTENDED TO PREVENT INTRUSIVE REGULATION BY LOCAL FRANCHISING AUTHORITIES.

The 1996 Act limits an LFA's ability to prescribe or enforce technical standards as part of a franchise. Section 624(e) of the Communications Act, as amended by the 1996 Act, no longer provides that "[a] franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of

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31/ *See Notice* at ¶ 79.

[technical] standards prescribed under this section."[32/] The 1996 Act also deleted language from Section 624(e) that allowed franchising authorities to petition the Commission for a waiver to impose technical standards more stringent than those prescribed by the Commission.[33/] Congress replaced these provisions with a prohibition against franchising authority regulation of subscriber equipment or transmission technology: "No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology."[34/]

In adopting these amendments to Section 624(e), Congress sought to "avoid the effects of disjointed local regulation" of cable signal quality.[35/] The House observed that "the patchwork of regulations that would result from a locality-by-locality approach is particularly inappropriate in today's intensely dynamic technological environment."[36/] Given these Congressional concerns about inconsistent regulatory oversight by local franchising authorities, the Commission should preclude franchising authorities from including in cable franchises any provisions for the enforcement of technical standards. In deleting the provision of 624(e) that previously allowed franchising authorities to require enforcement provisions as part of a franchise, Congress has clearly expressed its belief that the

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32/ 1996 Act, § 301(e). *See Notice* at ¶ 40.

33/ 1996 Act, § 301(e).

34/ 47 U.S.C. § 544(e), *added by* 1996 Act, § 301(e).

35/ House Report at 110.

36/ *Id.*

Commission would be better able than local franchising authorities to enforce its technical standards uniformly and consistently throughout the nation.

The Commission should also make clear that LFAs cannot insist upon technical standards more stringent than the Commission's when deciding whether to grant, renew, or transfer a franchise. The *Notice* points out that the 1996 Act did not alter the provision of Section 621 of the Communications Act that allows LFAs to consider an operator's "technical qualifications" to provide cable service.[37/] Similarly, the 1996 Act did not alter the provision of Section 626 that authorizes LFAs to consider the "quality of the operator's service, including signal quality" during the course of a franchise renewal.[38/] Nevertheless, the 1996 Act's amendments to Section 624(e) require that the technical considerations referred to in Sections 621 and 626 be limited to determining whether the operator can deliver a signal that satisfies the Commission's technical standards. In short, the Commission must not allow LFAs to use their ability to consider technical qualifications and signal quality as an avenue for circumventing the 1996 Act's clear directive that they not impose stricter technical standards on cable franchisees than are provided under the Commission's rules.

CONCLUSION

The 1996 Act modified the current system of regulation of cable operators and instead instituted a system based on competition and market-based results. As the Commission

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37/ *Notice* at ¶ 104.

38/ 47 U.S.C. § 546(c)(1)(B).